

JOHN L. TIMM AND RUTH D. BLOMGREN

IBLA 77-56

Decided June 6, 1977

Appeal from decision of the District Office, Lewistown, Montana, Bureau of Land Management, denying a request for assistance in construction of a fence along common boundary between private land and national resource land.

Affirmed.

1. Administrative Practice -- Appropriations -- Grazing and Grazing Lands

The denial of a private landowner's request that the Bureau of Land Management share in the expenses of constructing a fence between federal and private land will be upheld where the landowner has failed to show a valid legal or factual reason for granting the request.

APPEARANCES: John L. Timm and Ruth D. Blomgren, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

John L. Timm and Ruth D. Blomgren appeal from the decision of the District Office, Lewistown, Montana, Bureau of Land Management (BLM), denying their request for assistance in the construction of a fence between national resource land and their private land. Appellants' land adjoins the national resource land for approximately 1 mile, part of which is unfenced. Both appellants' land and the federal land are used for grazing.

By letter of August 10, 1976, appellants requested that BLM share the cost of constructing fencing between their land and the national resource land. They stated that their understanding of Montana State law was that adjoining landowners must equally share the cost of fencing the common boundaries.

The BLM District Office replied on October 15, 1976, informing appellant that Montana State law regarding the fencing of common boundaries does not apply to the Federal Government. Moreover, because of policy constraints and a court order requiring BLM to prepare Environmental Impact Statements on its grazing programs, the District Office stated it was prevented from initiating new range improvement projects.

In their statement of reasons, appellants reiterate their understanding of Montana law. They argue that it would apply because the federal land is leased to a Montana resident. Further, they state that BLM has entered into fencing agreements with other landowners. Finally, they argue that the fencing they request should not be considered a range improvement but a necessary incident to proper range management.

[1] All we have before us is appellants' abstract proposition that the United States as a landowner and landlord should furnish fencing materials to appellants. Appellants have not referred to a particular Montana law which would apply to the Federal Government. We doubt, as an abstract proposition, that without express Congressional authorization, any state law could affect federal administration of federal public lands so as to compel participation by the United States in the construction of appellants' proposed fence. The power to regulate use and occupancy of federal public lands is broadly given to Congress, and federal law is supreme over state law. See U.S. Const., Art. IV, § 3, cl. 2 and Art. VI, cl. 2; Kleppe v. New Mexico, 426 U.S. 529 (1976). In any event, the issue has not been sufficiently delineated for any full consideration by this Board.

Furthermore, appellants have not shown facts which would warrant us to change BLM's denial of their request. Even assuming, *arguendo*, that there is some authority for BLM to aid appellants in this matter (which appellants have not shown), the granting of such assistance would be within the discretion of BLM officials. The construction of a fence may be beneficial to appellants, but they have not shown that it would be beneficial to the United States. Appellants' mere allegations that BLM entered into agreements with other landowners does not demonstrate that the circumstances here are similar or that BLM's action was improper. In the absence of a valid legal or factual reason for granting appellants' request, BLM's denial of the request will be upheld.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge

